

ENTERED

August 17, 2022

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: BRAZOS ELECTRIC POWER COOPERATIVE, INC., Debtor. ¹	Chapter 11 Case No.: 21-30725 (DRJ)
BRAZOS ELECTRIC POWER COOPERATIVE, INC., Plaintiff, v. 507 CAPITAL, LLC, <i>et al.</i> , Defendants.	Adv. Pro. No.: 21-04407 (DRJ) Re: ECF Nos. 77, 78, 80, 81, 82 & 84.

ORDER

BEFORE THE COURT are the motions to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as incorporated by Rule 7012(b)(6) of the Federal Rules of Bankruptcy Procedure, as to the *Debtor's First Amended Complaint Objecting to Proofs of Claim Related to Certain Natural Gas Sales to the Debtor* [ECF No. 77] (the "**Amended Complaint**") filed by defendants: (i) 507 Capital LLC, 507 Summit LLC, Cetus Capital VI, L.P., Crossing Bridge Low Duration High Yield Income Fund, Destinations Global Fixed Income Opportunities Fund, Destinations Low Duration Fixed Income Fund, Leaffilter North Holdings, Inc., OFM II, LP, OU 2 LLC, RiverPark Short Term High Yield Fund, RiverPark Strategic Income Fund and Two Seas Global (Master) Fund LP [ECF No. 78], (ii) ETC Marketing, Ltd. [ECF No. 80], (iii) Tenaska Marketing Ventures [ECF No. 81], (iv) NJR Energy Resources Company [ECF No.

¹ The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number is: Brazos Electric Power Cooperative, Inc. (4729). Additional information regarding this case may be obtained on the website of the Debtor's claims and noticing agent at <http://cases.stretto.com/Brazos>. The Debtor's address is 7616 Bagby Avenue, Waco, TX 76712.

82], and (v) Total Gas & Power North America, Inc. [ECF No. 84] (collectively hereinafter referred to as the “**Gas Claimants**” and the “**Motions to Dismiss**”). The Court having considered the papers filed in support of and in opposition to the Motions to Dismiss together with the oral arguments of counsel at the hearing held before the Court on August 3, 2022; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, this matter is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(B), venue is proper in this Court pursuant to 28 U.S.C. § 1409, and the Court has statutory and constitutional authority to enter a final order in this matter;² and good and sufficient cause having been shown for granting of the relief set forth herein, it is hereby

ORDERED that:

1. The Motions to Dismiss are hereby **GRANTED** in part and **DENIED** in part, as set forth below:

- a. The Motions to Dismiss are **GRANTED** with respect to Count One (1) of the Amended Complaint, which is hereby dismissed with prejudice for failure to state a claim upon which relief may be granted;
- b. The Motions to Dismiss are **GRANTED** with respect to Counts Two (2) and Three (3) of the Amended Complaint, which are hereby dismissed with prejudice for failure to state a claim upon which relief may be granted as to any obligations that were incurred before February 15, 2021;
- c. The Motions to Dismiss are **DENIED** with respect to Counts Two (2) and Three (3) of the Amended Complaint as to any obligations that were incurred on or after February 15, 2021; and
- d. The Motions to Dismiss are **DENIED** with respect to Counts Four (4) and Five (5) of the Amended Complaint.

2. The Debtor’s request for leave to further amend the Amended Complaint is **DENIED**.

² The additional findings and conclusions made by the Court on the record at the August 3, 2022 hearing are hereby incorporated into this Order.

3. The Gas Claimants' deadline to answer the remaining counts of the Amended Complaint will be set forth in a scheduling order to be entered by this Court.

4. The Court shall retain exclusive jurisdiction to interpret and enforce the provisions of this Order in all respects and further hear and determine all matters arising from the construction and implementation of this Order.

Signed: August 17, 2022.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE